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MT LEGISLATIVE HISTORY

Chapter 38 1983

Bill H 154 S _____ Original bill & hist. ___C

H. Committee on State Administration		S. Committee on Natural Resources	
Hearing Date(s) Jan 17	✓C	Hearing Date(s) Feb 04	✓C
Jan 18	✓C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 18	✓C	Feb 04	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

STATUS SHEET

HOUSE STATE ADMINISTRATION COMMITTEE

48th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 154	State lands, commissioner power to appoint arbitrator to assess improvements	1/11/83	Spaeth	1/17/83	DO PASS AS AMENDED	1/18/83
HB 155	State lands, right-of-way value for damages, arbitration	1/11	Spaeth	1/17	DO PASS AS AMENDED	1/18
HB 167	Documents, duplicate originals, filing with Secretary of State, revising	1/11	Sands	1/18	DO PASS	1/18
HB 169	Teachers' Retirement System; revising "earned compensation"	1/11	Eudaily	1/18	DO PASS AS AMENDED	1/20
HB 173	Election laws, amending to require only Title 13 be sent to precincts	1/11	Smith	1/18	DO PASS	1/18
HB 177	Motor Pool, transferring to Dept. of Administration	1/12	Waldron	1/21/83	DO NOT PASS	1/21

Chairman Brand asked that when Republican delegates go to the national convention, does the party have split delegations. Representative Hemstad said no. Chairman Brand asked if therefore, does that mean the party pays no attention to the wishes of the voters. Representative Hemstad said that in 1980 Montana Republicans made a choice for Ronald Reagan over George Bush, and therefore, the Montana delegation was dedicated to Ronald Reagan. Chairman Brand suggested that meant the Republicans never gave the minority a break.

REPRESENTATIVE BRENT BLISS noted that the 1976 delegation to that year's national convention was split between Ford and Reagan. Representative Hemstad said the GOP delegates are split by states at the national convention.

REPRESENTATIVE CLYDE SMITH asked that under the proposed bill, wouldn't the party candidate that was the strongest be most likely to lose. Representative Hemstad said the people would make their choice.

Chairman Brand noted that "there are devious people." He stated that some problem with the bill was because of that fact, and that devious people may switch parties in order to influence the outcome of the races in the adverse party. Representative Hemstad said the overwhelming number of independent voters are not devious, they are intelligent voters.

REPRESENTATIVE PAUL PISTORIA asked that under the proposed system, did Representative Hemstad suggest that there would be a larger turnout. Representative Pistoria, after receiving an answer in the affirmative, asked why there was such a paucity of voters in local elections in school elections. Representative Hemstad said many voters stay home from those elections because of the issues involved.

THERE BEING NO FURTHER QUESTIONS FROM THE COMMITTEE, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 117.

HOUSE BILL 154

Chairman Brand opened the hearing on HOUSE BILL 154 by calling on its sponsor, REPRESENTATIVE GARY SPAETH. Representative Spaeth said House Bill 154 would provide an amendment to the present arbitration system in the matters of state lands when the holder of a lease leaves and a new leasee comes in. Representative Spaeth said there may be problems in reaching a price in those cases and reaching an agreement on an amount the leasee should pay for improvements. Typically, Spaeth said, the seller of the lease rights believes the improvements are more valuable than does the buyer.

Representative Spaeth said the system that now exists requires the parties to go to arbitration to decide a fair price. The problem is, he said, that if one or more of the parties does not appoint an arbitrator, that amounts to a monkey wrench in the works that forces the matter into court. He said this was not in the interests of judical economy, and the bill would allow the Commissioner of State Lands to appoint an arbitrator.

Representative Spaeth called on the Commissioner of State Lands, DENNIS HEMMER, who said the bill is an attempt to remedy a problem that has caused the loss of revenue to the Department and to the beneficiary schools when the situation has arisen. Commissioner Hemmer read into the record a prepared statement. (See attached statement.)

THERE BEING NO OTHER PROPONENTS AND NO OPPONENTS TO HOUSE BILL 154, AND NO CLOSING REMARKS BY REPRESENTATIVE SPAETH, CHAIRMAN BRAND CALLED FOR QUESTIONS FROM COMMITTEE MEMBERS.

COMMITTEE QUESTIONS

REPRESENTATIVE McBRIDE asked if the valuation appointed by the three arbitrators now on the statute is appealable. Representative Spaeth said it was appealable to the Commissioner within ten days, and also that the Commissioner's decision is appealable to courts on limited grounds.

Representative Hand asked if the circumstances sought to be remedied by this measure were frequent. DAVE WOODGERD, who identified himself as chief legal council for the Department, said that as few as six and as many as 12 such situations arise every year.

Representative Koehnke asked if it is possible for the Department to lose a lease year because of disagreement between the parties. Commissioner Hemmer confirmed that it was possible.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 154.

HOUSE BILL 155

Chairman Brand opened the hearing on House Bill 155 by calling on its chief sponsor, REPRESENTATIVE GARY SPAETH, who explained that House Bill 155 is similar to House Bill 154. He said often there is conflict between the parties as to damages when an easement on a leasehold is taken. He said, however, that this bill would go further than House Bill 154, in that it would add the arbitration provisions and remedies of House Bill 154 to such a factual situation

A voice vote taken on the motion was not unanimous, and Chairman Brand called for a ROLL-CALL VOTE.

Voting AYE were REPRESENTATIVES BLISS, BRAND, DRISCOLL, HAMMOND, HAND, HOLLIDAY, KOEHNKE, McBRIDE, McCORMICK, O'CONNELL, PISTORIA, SALES, SMITH. Voting NAY were REPRESENTATIVES COMPTON, MUELLER, PHILLIPS, RYAN, SOLBERG. There were thirteen ayes, five nays, and the MOTION CARRIED. (Representatives Sales and Holliday voted by proxy given to Chairman Brand, which appears attached to these minutes.)

HOUSE BILL 154

Chairman Brand called for a motion on House Bill 154.

Representative Hand MOVED, Representative Lloyd McCormick seconded, that House Bill 154 DO PASS.

Representative McBride questioned Representative Spaeth about language in the bill, particularly page 2, lines 9 and 10. Representative Spaeth suggested possible amendments, and Chairman Brand suggested the bill be tabled for a few days for amendments. Representative Hand withdrew his motion and Representative McCormick withdrew his second.

Representative Mueller MOVED, Representative McCormick seconded, that House Bill 154 be TABLED. The question was called and was CARRIED on a unanimous voice vote.

HOUSE BILL 79

Chairman Brand asked Representative McBride about the subcommittee work on House Bill 79. Representative McBride said her committee was awaiting amendments and fiscal notes.

Chairman Brand noted that action on REPRESENTATIVE BOB PAVLOVICH'S House Bill 57 would be coming up soon. He also reminded committee members that beginning tomorrow (Tuesday, January 18) meetings would begin at 8 a.m.

The meeting was adjourned.

Joe Brand

REPRESENTATIVE JOE BRAND, Chairman

House BILL NO. 154

INTRODUCED BY Lyndell Saunders Selby

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE COMMISSIONER OF STATE LANDS MAY APPOINT AN ARBITRATOR TO ASCERTAIN THE VALUE OF IMPROVEMENTS ON STATE LAND WHEN ANY PARTY REFUSES TO DO SO; AMENDING SECTION 77-6-306, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 77-6-306, MCA, is amended to read:

"77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator appointed by the commissioner has the same duties and powers as if appointed by one of the parties. The value of the improvements shall be ascertained and fixed as this part provides.

(2) The reasonable compensation that the arbitrators may fix for their services shall be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice may demand."

-End-

INTRODUCED BILL

HB 154

prepared testimony
by Lands Comm. / Hemmer

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 154

BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE

House Bill 154 is by the request of the Department of State Lands. The purpose of the bill is to provide a solution to a problem which has caused the loss of revenues to the state and its school trust income fund.

The problem arises when a lease of State school trust land for agricultural or grazing purposes is transferred to a new lessee. The former lessee has the right pursuant to section 77-6-203 MCA to be paid for the reasonable value of the improvements which exist on the lease. The statute also provides that if the former lessee and the new lessee cannot agree, the value of the improvements shall be ascertained and fixed as provided in section 77-6-306, MCA. This statute is the one which the department is requesting be amended.

Section 77-6-306 MCA as it currently exists provides for the appointment of persons to act as arbitrators, in order to ascertain the value of the improvements. The new lessee and the former lessee each are required to appoint an arbitrator and these two arbitrators then appoint a third arbitrator.

This system is fair and works well in most cases. The problem that occurs is when either the new lessee or former lessee fails to appoint an arbitrator in a timely manner. According to section 77-6-305 MCA, the department cannot issue a lease until the former lessee has been compensated. Thus, if one party fails to appoint an arbitrator, the state land must remain unleased. The new lessee cannot use the land and the state cannot collect rentals until the lease is issued.

The solution to the problem, as proposed by the department, is to amend section 77-6-306 MCA to allow the Commissioner of State Lands to appoint an arbitrator if any party refuses to do so. It is hoped that the Commissioner will never have to use this authority; however, without this authority there is no incentive for a recalcitrant lessee to appoint an arbitrator and settle the matter so that a lease can be issued.

The passage of this amendment will not prejudice the rights of former or new lessees but only encourage them to carry out the process of ascertaining the value of improvements in a timely manner. When the process is not carried out in a timely manner, the State may lose revenue and the rights of the parties may be prejudiced.

The Department of State Lands urges this committee to vote in favor of passage of this amendment.

House BILL NO. 154

INTRODUCED BY Sprunk Saunders Selja

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE COMMISSIONER OF STATE LANDS MAY APPOINT AN ARBITRATOR TO ASCERTAIN THE VALUE OF IMPROVEMENTS ON STATE LAND WHEN ANY PARTY REFUSES TO DO SO; AMENDING SECTION 77-6-306, MCA."

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(2) The reasonable compensation that the arbitrators may fix for their services shall be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice may demand."

-End-

LC 0463/01

INTRODUCED BILL

HB 154

prepared testimony by Lands Comm. Hemmer

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 154

BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE

House Bill 154 is by the request of the Department of State Lands. The purpose of the bill is to provide a solution to a problem which has caused the loss of revenues to the state and its school trust income fund.

The problem arises when a lease of State school trust land for agricultural or grazing purposes is transferred to a new lessee. The former lessee has the right pursuant to section 77-6-203 MCA to be paid for the reasonable value of the improvements which exist on the lease. The statute also provides that if the former lessee and the new lessee cannot agree, the value of the improvements shall be ascertained and fixed as provided in section 77-6-306, MCA. This statute is the one which the department is requesting be amended.

Section 77-6-306 MCA as it currently exists provides for the appointment of persons to act as arbitrators, in order to ascertain the value of the improvements. The new lessee and the former lessee each are required to appoint an arbitrator and these two arbitrators then appoint a third arbitrator.

This system is fair and works well in most cases. The problem that occurs is when either the new lessee or former lessee fails to appoint an arbitrator in a timely manner. According to section 77-6-305 MCA, the department cannot issue a lease until the former lessee has been compensated. Thus, if one party fails to appoint an arbitrator, the state land must remain unleased. The new lessee cannot use the land and the state cannot collect rentals until the lease is issued.

The solution to the problem, as proposed by the department, is to amend section 77-6-306 MCA to allow the Commissioner of State Lands to appoint an arbitrator if any party refuses to do so. It is hoped that the Commissioner will never have to use this authority; however, without this authority there is no incentive for a recalcitrant lessee to appoint an arbitrator and settle the matter so that a lease can be issued.

The passage of this amendment will not prejudice the rights of former or new lessees but only encourage them to carry out the process of ascertaining the value of improvements in a timely manner. When the process is not carried out in a timely manner, the State may lose revenue and the rights of the parties may be prejudiced.

The Department of State Lands urges this committee to vote in favor of passage of this amendment.

WITNESS STATEMENT

NAME Cozy Spaeth BILL No. 154-155

ADDRESS District 71 DATE

WHOM DO YOU REPRESENT

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

VISITORS' REGISTER

HOUSE State Admin. COMMITTEE

BILL HB [redacted] 154 Date 1-17-83

SPONSOR [redacted]

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
[illegible]	Helena	Land Info. T		
Kelly Blake	Helena	Dept. of State Lands	x	
Norm Hedglund	Helena	Dept. of State Lands	X	
Dennis Hemmer	Helena	Dept of State Lands	X	
David Friedland	Helena	Self		
Spaeth	Helena	Sponsor	X	
[illegible]	[illegible]	Self		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Dennis Hemmer BILL No. 154

ADDRESS capitol Station, Helena, MT DATE 1-17-83

WHOM DO YOU REPRESENT Dept. of State Lands

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

Proposed amendments for HB 154:

1. Title, line 8.
   Following: " ; "
   Insert: "TO PERMIT A DECISION BY THE DEPARTMENT OF STATE LANDS ASCERTAINING THE VALUE OF IMPROVEMENTS TO BE APPEALED TO DISTRICT COURT; "

2. Page 2, line 9.
   Following: "and"
   Insert: ", except as provided in subsection (4),"

3. Page 2, line 12.
   Following: "demand"
   Strike: " " "
   Insert: "(4) If either party is dissatisfied with the valuation fixed by the department, he may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision.""

EXCUSE

Date: Jan 14, 1983

Representative Hutchison is excused from the committee hearing to be conducted 1-17, 1983.

REP. JOE BRAND, Chairman

o-0-o

PROXY

In view of the above absence, I give my proxy to Representative Brand for bill(s) HB 117 HB 154 - HB 155

to follow these instructions

HB 117 Yes on Do Pass

HB 154 Yes on Do Pass & when if amended

HB 155 Yes on Do Pass & when if amended

Rep. Ray Hutchison

signature

EXCUSE

Date: 1/15, 1983

Representative SALES is excused from the committee hearing to be conducted 1/17, 1983.

REP. JOE BRAND, Chairman

o-0-o

PROXY

In view of the above absence, I give my proxy to Representative O'CONNELL for bill(s) HB 117 HB 154 HB 155 to follow these instructions

HB 117 - No

HB 154 - No

HB 155 - No - Unless 3 (b) Is Deleted, Then Yes.

Walter D. Sales

signature

48TH LEGISLATIVE SESSION

COMMITTEE ON SENATE NATURAL RESOURCES

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 8	2-09-83	3-07-83	3-09-83						3-09-83
HB 8	3-14-83	3-14-83	3-14-83					3-14-83	
HB 68	1-31-83	2-16-83	3-16-83					3-16-83	
HB 122	2-01-83	2-16-83	2-16-83					2-16-83	
HB 135	2-01-83	3-09-83	3-09-83				3-09-83		
HB 154	1-24-83	2-04-83	2-04-83				2-04-83		
HB 155	1-24-83	2-04-83	2-04-83				2-04-83		
HB 203	1-29-83	3-11-83	3-11-83				3-11-83		
HB 207	2-03-83	3-11-83	3-11-83				3-11-83		
HB 214	1-29-83	2-14-83	2-14-83				2-14-83		
HB 228	3-01-83	3-16-83	3-18-83					3-18-83	
HB 255	1-31-83	3-04-83	3-04-83				3-04-83		
HB 260	2-16-83	3-04-83	3-04-83				3-04-83		
HB 263	2-10-83	3-07-83	3-07-83				3-07-83		
HB 287	2-02-83	2-14-83	2-14-83				2-14-83		
HB 305	2-05-83	3-04-83	3-04-83				3-04-83		

Use a separate sheet for Senate, House Bills, and Resolutions.

SB 270 (cont.)
Senator Etchart inquired if this would be in competition with private labs. Yvonne Sylva of the Dept. of Health and Environmental Science stated the $99,000 would not put the lab in competition with private labs. It is for fees that are generated primarily through water tests.

Senator Story inquired as to the effect of the second amendment. Ray Hoffman, also of DHES, stated this merely is a technical amendment.

Senator Van Valkenburg stated he recalled a great deal of discussion during the first special session on the same issue, and that it was pointed out if fees are charged for the Dept. of Health lab services, they probably wouldn't be asked to do those services. He inquired of Dr. Drynan of the Dept. of Health as to his position. Dr. Drynan stated that discussion had been around the microbiological area, This bill only allows for fees on water testing for private individuals, cities and counties.

Senator Story stated many people had said they didn't want the state lab in competition with private labs and wondered if that was what this bill does. Mr. Hoffman stated it would not, that fees would make the tests be run elsewhere. He pointed out determining costs of the tests would also be difficult to compute unless there were a way to determine the fee based on actually doing the tests rather than based on the previous year. There were no further questions and hearing was closed on SB 270.

HOUSE BILL 154: Chairman Dover called on Rep. Gary Spaeth, Dist. 71, sponsor. Rep. Sapeth stated the bill was at the request of the Dept. of State Lands, and relates to requirement of a new lessee purchasing improvements from a former lessee of state lands. Present law provides for appointment of arbitrators by each party, and when they fail to do this, the system falls down. This bill would provide for the Dept. to appoint an arbitrator should the parties fail to do so. The House had amended the bill to clarify it in relation to HB 155, which is a closely associated bill. He called on Dennis Hemmer of the Dept. of State Lands for further explanation.

PROPONENTS: Dennis Hemmer, Commissioner, State Lands, explained the reasons for the request of the bill, that it is to encourage lessees to carry out the process of determining value of improvements when land changes hands. His testimony is attached as Exhibit '1'

OPPONENTS: No opponents desired to speak.

Senator Lee inquired which House committee had heard the bills, it was Administration.

(HB 154, cont.)

Senator Eck stated during the last water conference, it had been discussed that arbitration and determination of environmental conflicts solving needed to be resolved. At that time it had been suggested that state agencies set up a training course in these areas, to prepare people trained in solving disputes through negotiation rather than conflict, and that there might not be so many disputes. She inquired if this had been done. Rep. Spaeth stated he did not know of anything in this area.

Senator Tveit stated he didn't realize the law was on the books like this, that two years ago there had been an area of state land on which improvements had been made and the department released the lease. The improvements were not taken into consideration. Rep. Spaeth pointed out this is to solve the conflicts that come between lessees. Mr. Hemmer stated that the subject being discussed is a separate process from this bill, that when land goes out at the end of a lease, the current lessee can meet a higher bid if he chooses, and if he doesn't agree with the price being charged can request a hearing. If he chooses not to retain the lease, this bill deals with the method of his being compensated for his improvements.

Senator Eck inquired if a lessee has to have approval of the Dept. of State Lands to install improvements, Mr. Hemmer stated they do.

There was no further discussion and hearing was closed on House Bill 154.

HOUSE BILL 155: Chairman Dover called on Rep. Spaeth, also sponsor of this bill. Rep. Spaeth stated this bill is very closely related to the previous bill. At the present time a person obtaining a right of way easement on state lands is supposed to compensate the lessee. There is currently no process for arbitration on these easements. This bill will settle disputes in a more timely manner. He stated this is also a request of the Dept. of State Lands and asked Dennis Hemmer to speak to the bill.

PROPONENTS: Chairman Dover inquired of proponents. Dennis Hemmer, State Lands Commissioner stated this bill is at their request to provide a process for ascertaining damages caused by granting of an easement and for arbitration process to be certain the lessee will be compensated in a timely manner. His testimony is attached, Exhibit '2'.

John Alkey, MDU, stated that in Eastern Montana, they have used a form that requires settlement by an arbitrator. He suggested an amendment to the bill related to the department requiring posting of bond to insure that the lessee receives

HB 155 (cont.)
just settlement. His proposed amendment is attached as Exhibit '3".

OPPONENTS: Chairman Dover called for opponents, there were none.

Senator Etchart inquired as to how this bill would relate to seismographic crews and noted that they can do quite a bit of damage on grazing land, and how that would be handled. Rep. Spaeth stated the bill is really dealing with easements.

Dave Woodgerd stated this doesn't cover seismographic crews expressly, however they would have to have a permit from the state on state leased land. Before the permit is issued they have to settle damages with the lessee. Senator Etchart gave an example that they may have paid $50 to the state and asked what portion would go to the lessee. Mr. Woodgerd said the $50 would be kept by the state and in addition they have to pay the lessee an amount that covers any damages to his interest or improvements.

Senator Tveit stated the proposed amendment would make that settlement after the fact. The MDU representative stated this was because they can't tell what costs of damages will be until after they have done their work. Senator Tveit asked whose benefit this would be? Mr. Alkey stated it would benefit both parties. Senator Tveit cited an example of a case where a crew might pull out after the work was done and conveniently forget to pay. Mr. Hemmer of the Dept. of State lands stated that might be workable, but he wouldn't suggest the amendment.

Senator Dover inquired as to how the proposed amendment would relate to the bill, that it currently says they have to wait for a permit until damages are paid. There was discussion of whether payment should be made ahead and whether there would be retroactive damages, such as when gates are left open on land. There was further discussion of the proposed amendment, Rep. Spaeth stated he would rather not see the amendment, it would involve a great change to the bill and the title as well. Hearing was then closed on HB 155.

ACTION ON HOUSE BILL 154: There was no further discussion, Senator Shaw moved that House Bill 154 Be Concurred In, all voted 'aye' and motion carried.

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2-4-83

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)			✓
LEE, Gary P. (R)	✓		
MANNING, Dave (D)		✓	
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

Stephens, Stan ✓

2/4/83

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 154

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

House Bill 154 is by the request of the Department of State Lands. The purpose of the bill is to provide a solution to a problem which has caused the loss of revenues to the state and its school trust income fund.

The problem arises when a lease of State school trust land for agricultural or grazing purposes is transferred to a new lessee. The former lessee has the right pursuant to section 77-6-203 MCA to be paid for the reasonable value of the improvements which exist on the lease. The statute also provides that if the former lessee and the new lessee cannot agree, the value of the improvements shall be ascertained and fixed as provided in section 77-6-306, MCA. This statute is the one which the department is requesting be amended.

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This system is fair and works well in most cases. The problem that occurs is when either the new lessee or former lessee fails to appoint an arbitrator in a timely manner. According to section 77-6-305 MCA, the department cannot issue a lease until the former lessee has been compensated. Thus, if one party fails to appoint an arbitrator, the state land must remain unleased. The new lessee cannot use the land and the state cannot collect rentals until the lease is issued.

The solution to the problem, as proposed by the department, is to amend section 77-6-306 MCA to allow the Commissioner of State Lands to appoint an arbitrator if any party refuses to do so. It is hoped that the Commissioner will never have to use this authority; however, without this authority there is no incentive for a recalcitrant lessee to appoint an arbitrator and settle the matter so that a lease can be issued.

The bill as originally proposed was amended in the House State Administration Committee to specifically provide that the final decision by the department as to the value of the improvements can be appealed to District Court. The department supported this amendment.

The passage of this bill will not prejudice the rights of former or new lessees but only encourage them to carry out the process of ascertaining the value of improvements in a timely manner. When the process is not carried out in a timely manner, the State may lose revenue and the rights of the parties may be prejudiced.

The Department of State Lands urges this committee to vote in favor of passage of this bill as amended.

February 4 19 83

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration House Bill No. 154

Spaeth (Tveit)

Respectfully report as follows: That House Bill No. 154

BE CONCURRED IN

~~DO PASS~~

SEN. HAROLD L. DOVER Chairman.

STATE PUB. CO.
Helena, Mont.

pc.

(HB 154, cont.)

Senator Eck stated during the last water conference, it had been discussed that arbitration and determination of environmental conflicts solving needed to be resolved. At that time it had been suggested that state agencies set up a training course in these areas, to prepare people trained in solving disputes through negotiation rather than conflict, and that there might not be so many disputes. She inquired if this had been done. Rep. Spaeth stated he did not know of anything in this area.

Senator Tveit stated he didn't realize the law was on the books like this, that two years ago there had been an area of state land on which improvements had been made and the department released the lease. The improvements were not taken into consideration. Rep. Spaeth pointed out this is to solve the conflicts that come between lessees. Mr. Hemmer stated that the subject being discussed is a separate process from this bill, that when land goes out at the end of a lease, the current lessee can meet a higher bid if he chooses, and if he doesn't agree with the price being charged can request a hearing. If he chooses not to retain the lease, this bill deals with the method of his being compensated for his improvements.

Senator Eck inquired if a lessee has to have approval of the Dept. of State Lands to install improvements, Mr. Hemmer stated they do.

There was no further discussion and hearing was closed on House Bill 154.

HOUSE BILL 155: Chairman Dover called on Rep. Spaeth, also sponsor of this bill. Rep. Spaeth stated this bill is very closely related to the previous bill. At the present time a person obtaining a right of way easement on state lands is supposed to compensate the lessee. There is currently no process for arbitration on these easements. This bill will settle disputes in a more timely manner. He stated this is also a request of the Dept. of State Lands and asked Dennis Hemmer to speak to the bill.

PROPONENTS: Chairman Dover inquired of proponents. Dennis Hemmer, State Lands Commissioner stated this bill is at their request to provide a process for ascertaining damages caused by granting of an easement and for arbitration process to be certain the lessee will be compensated in a timely manner. His testimony is attached, Exhibit '2'.

John Alkey, MDU, stated that in Eastern Montana, they have used a form that requires settlement by an arbitrator. He suggested an amendment to the bill related to the department requiring posting of bond to insure that the lessee receives

EXCUSE

Date: Jan. 17, 1983

Representative Paul S. Pistoria is excused from the committee hearing to be conducted 18, 1983.

Joe Brand

REP. JOE BRAND, Chairman

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PROXY

In view of the above absence, I give my proxy to Representative Joe Brand for bill(s) H.B. 154 & H.B. 155 (as amended) to follow these instructions Vote YES ON Both Bills

Paul S. Pistoria

signature

Chairman Brand said the problem is that some members are using the last three years of their service to boost retirement payments out of proportion to what they are entitled to during their periods of contribution to the system.

Rep. Smith suggested putting a $150 cap on housing issues in order to persuade more system members to pay income taxes on the housing benefit they receive.

Rep. Holliday MOVED to have an amendment drawn to place a cap of $150 on housing factors. Rep. Koehnke SECONDED.

Rep. Bardanouve said he was not sure that $150 is a fair figure. Rep. Sales said the way to solve the problem is to change the three-year period for computation of benefits to 20 years and "not worry about it."

Rep. Hand MOVED a substitute motion for a $150 cap. Chairman Brand reminded him that that was the motion.

The questions was called and the motion carried by voice vote, Reps. Sales, Mueller, and Hand voting "no."

HOUSE BILL 167

Rep. Sales MOVED DO PASS. Rep. Mueller SECONDED. The question was called and the motion carried by unanimous voice vote.

HOUSE BILL 173

Rep. Bardanouve MOVED DO PASS Rep. Sales SECONDED. The question was called and the MOTION CARRIED by unanimous voice vote.

HOUSE BILL 154

Rep. Driscoll MOVED to adopt all amendments. Rep. Hammond SECONDED.

Chairman Brand answered a question by Rep. McBride that the State Lands Department agrees with the amendment.

The question was called and the MOTION CARRIED by unanimous voice vote. The amendment was adopted.

Rep. Hammond MOVED DO PASS House Bill 154 as amended. Rep. Smith seconded. The question was called and the MOTION CARRIED by unanimous voice vote.

JANUARY 18, 83

19

SPEAKER

MR. .....

STATE ADMINISTRATION

We, your committee on .....

HOUSE 154

having had under consideration ..... Bill No. .....

first white

reading copy (color)

"AN ACT TO PROVIDE THAT THE COMMISSIONER OF STATE LANDS MAY APPOINT AN ARBITRATOR TO ASCERTAIN THE VALUE OF IMPROVEMENTS ON STATE LAND WHEN ANY PARTY REFUSES TO DO SO; AMENDING SECTION 77-6-306, MCA."

HOUSE 154

Respectfully report as follows: That ..... Bill No. .....

be amended as follows:

1. Title, line 8.
   Following: ";"
   Insert: "TO PERMIT A DECISION BY THE DEPARTMENT OF STATE LANDS ASCERTAINING THE VALUE OF IMPROVEMENTS TO BE APPEALED TO THE DISTRICT COURT;"

2. Page 2, line 9.
   Following: "and"
   Insert: ", except as provided in subsection (4),"

3. Page 2, line 12.
   Following: "demand."
   Insert: "(4) If either party is dissatisfied with valuation fixed by the department, he may within 30 days after receipt

DO PASS

.....

JOE BRAND, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

JANUARY 13, 19 93

of the department's decision petition the district court in the county in which the majority of the state land is located of the district court of Lewis and Clark County for judicial review of the decision."

AND AS AMENDED

DO PASS

REP. JOE BRAND, Chairman.